

**James Madison to Joseph C. Cabell, August 16, 1829. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.**

**TO JOSEPH C. CABELL. MAD. MSS.**

Montpellier, Augt 16, 1829.

Dear Sir, —Your letter of the 5th found me under a return of indisposition which has not yet left me.<sup>1</sup>

<sup>1</sup> Cabell wrote from Warminster: "May I take the liberty to ask that you Will be so good as to read the enclosed pamphlet and to inform me whether the argument in the speech respecting the rights of the parties to the compact be sound and in conformity to your own views of the subject, and if there be error, where and to what extent, it exists." He had advanced the propositions in the pamphlet in the State Senate and afterwards written them out as a speech with notes for printing— *Mad. MSS.*

To this cause you must ascribe the tardiness of my attention to it.

Your speech with the accompanying notes and documents will make a very interesting and opportune publication. I think with Mr. Johnson that your view of the Virginia doctrine in 98–99 is essentially correct and easily guarded against any honest misconstructions. I have pencilled a very few interlineations and erasures, (easily removed if not approved) having that object. I wish you to revise them with an eye to the language of Virginia in her proceedings of that epoch, happening to be without a remaining copy of them. I make the same request as to my remarks below, involving a reference to those proceedings. As

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to the two paragraphs in brackets, disliked by Mr. J. I am at some loss what to say. Tho' they may certainly be spared without leaving a flaw, the first of them, at least, is so well calculated to rescue the authority of Mr. Jefferson on the constitutionality of the Tariff, from the perverted and disrespectful use made of it, that I should hesitate in advising a suppression of it.

On the subject of an Arbiter or Umpire, it might not be amiss, perhaps, to note at some place, that there can be none, external to the U. S. more than to individual States; nor within either, for those extreme cases, or questions of passive obedience & non-resistance, which justify and require a resort to the original rights of the parties to the compact. But that in all cases, not of that extreme character, there is an Arbiter or Umpire, as within the Governments of the States, so within that of the U. S. in the authority constitutionally provided for deciding, controversies concerning boundaries of right and power. The provision in the U. S. is particularly stated in the Federalist, No 39, pa. 241, Gideon's edn.

The tonnage and other duties for encouraging navigation are, in their

immediate operation, as locally partial to Northern Ship-owners, as a tariff on particular imports is partial to Northern manufacturers. Yet, South Carolina has uniformly favored the former as ultimately making us independent of foreign navigation, and, therefore, in reality of a National character. Ought she not in like manner, to concur in encouraging manufactures, tho' immediately partial to some local interests, in consideration of their ultimate effect in making the Nation independent of foreign supplies; provided the encouragement be not *unnecessarily* unequal in the immediate operation, nor extended to articles not *within the reason* of the policy?

On comparing the doctrine of Virginia in 98–99, with that of the present day in S. C. will it not be found that Virginia asserted that the States, as parties to the Constitutional compact, had a right and were bound, in extreme cases only, and after a failure of all

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efforts for redress under the forms of the Constitution, to interpose in their sovereign capacity, for the purpose of arresting the evil of usurpation, and preserving the Constitution and Union: Whereas the doctrine of the present day in S. C. asserts that in a case of not greater magnitude than the degree of inequality in the operation of a tariff in favor of manufactures, she may of herself finally decide, by virtue of her sovereignty, that the Constitution has been violated; and that if not yielded to by the Federal Government, tho' supported by all the other States, she may rightfully resist it and withdraw herself from the Union.

Is not the resolution of the Assembly at their last Session against the Tariff a departure from the ground taken at the preceding session? If my recollection does not err, the power of Congress, to lay imposts, was restricted at this session, to the sole case of revenue. Their late resolution denies it only in the case of manufactures, tacitly admitting, according to the modifications of S. Carolina, tonnage duties, and duties counteracting foreign regulations. If the inconsistency be as I suppose, be so good as to favor me with a transcript of the Resolutions of the penult session.<sup>1</sup> Your letter returning those borrowed was duly received some time ago.

<sup>1</sup> Cabell sent the resolutions of the sessions of 1825–26, 1826–27, and 1828–29. The first declared:—"That the imposition of taxes and duties by the Congress of the U. States, for the purpose of protecting and encouraging domestic manufactures, is an unconstitutional exercise of power and is highly oppressive and partial in its operations."

The second:—"That this General Assembly does hereby most solemnly protest against any claim or exercise of power, whatever, on the part of the General Government, which serves to draw money from the inhabitants of this state, into the treasury of the U. States and to disburse it for any object whatever, except for carrying into effect the grants of power to the General Government contained in the Constitution of the U. States," and

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“That this General Assembly does most solemnly protest against the claim or exercise of any power, whatever, on the part of the General Government, to protect domestic manufactures, the protection of manufactures not being amongst the grants of power to that government specified in the constitution of the U. States,—and also against the operations of the Act of Congress, passed May 22., 1824, entitled ‘An Act to amend the several acts imposing duties on imports’ generally called the tariff law, which vary the distribution of the proceeds of the labour of the community, in such a manner as to transfer property from one portion of the United States to another, and to take private property from the owner for the benefit of another person, not rendering public service,—as unconstitutional, unwise, unjust, unequal and oppressive.”

The third:—“That this General Assembly of Virginia, actuated by the desire of guarding the constitution from all violation, anxious to preserve and perpetuate the Union and to execute with fidelity the trust reposed in it by the people, as one of the high contracting parties, feels itself bound to declare, and it hereby most solemnly declares its deliberate conviction that the acts of Congress usually denominated the tariff laws passed avowedly for the protection of American manufactures are not authorized by the plain construction true intent and meaning of the constitution.”— *Mad. MSS.*